

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                 | ) |                     |
|                                  | ) |                     |
| Federal-State Board on Universal | ) | CC Docket No. 96-45 |
| Service                          | ) |                     |
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**Comments of the Public Utility Commission of Texas**

On February 15, 2002, the Federal Communications Commission (Commission) issued a *Notice of Proposed Rulemaking (NPRM) and Order* seeking comment on issues that were remanded by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) relating to the federal high-cost universal service support mechanism for non-rural carriers in the Commission's *Ninth Report and Order*.<sup>1</sup> In particular, the Tenth Circuit determined that, although the *Ninth Report and Order* may have met relevant statutory goals, the Commission did not provide an adequate explanation for its decision that the federal high-cost universal service support mechanism for non-rural carriers achieved the statutory principles codified in section 254 of the Federal Telecommunication Act. Specifically, the Tenth Circuit's remand requires the Commission to determine whether sufficiency should be determined by considering federal support only, or state support as well. The Tenth Circuit also determined that the Commission must develop methods to induce states to implement mechanisms for universal service support. Therefore, the Commission seeks comment on these two specific issues remanded by the Tenth Circuit.

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<sup>1</sup> *Federal-State Joint Board on Universal Service, Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).

The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submit these Comments on the *NPRM* and *Order* to the issues mentioned above.

## **Sufficiency of Universal Service Support**

Assuming that states will implement mechanisms to support universal service, the Commission invited comments addressing whether sufficiency should be determined by weighing federal support only, or state support as well. (§17) The Texas PUC believes that the sufficiency of universal service support should be determined by considering both state and federal support. The Texas PUC believes that FTA § 254 (b)(5)<sup>2</sup> and § 254 (f)<sup>3</sup> require that both federal and state support be considered when determining the sufficiency of universal service support. In addition, the Texas PUC notes that the provisions of the Public Utility Regulatory Act (PURA),<sup>4</sup> Chapter 56, and Texas PUC Substantive Rules 26.403 (e)(3)(B)<sup>5</sup> and 26.420(g)<sup>6</sup> both consider state and federal support in determining the sufficiency of universal service support.

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<sup>2</sup> 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service”).

<sup>3</sup> U.S.C. § 254(f) (“Every telecommunications carrier that provides intrastate telecommunication services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State”).

<sup>4</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 2000 & Supp. 2002) (PURA).

<sup>5</sup> P.U.C. Substantive Rule 26.403(e)(3)(B) (“Adjustment of federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP”).

<sup>6</sup> P.U.C. Substantive Rule 26.420(g) (“Assessments for TUSF”).

## State Inducements

The Commission also invited comment on whether it should induce states to implement mechanisms to support universal service. Specifically, the Commission seeks comments addressing whether it should: (1) implement a requirement for states to assume a per-line share of support obligation, similar to that of the *Seventh Report and Order*;<sup>7</sup> (2) condition federal support on some form of state action; (3) enter into a binding cooperative agreement with states as suggested by the Tenth Circuit; or (4) adopt some other form of state inducement. (¶24) The Texas PUC encourages the development of inducements for the implementation of universal service mechanisms. However, the Texas PUC believes that states with viable universal service support mechanisms, such as Texas, should be exempt from such requirements. The Texas PUC points out that the provisions in Chapter 56 of PURA and the Texas PUC Substantive Rules already establish requirements that are necessary to preserve and advance universal service in Texas.

The Texas PUC believes that its state universal service mechanism currently ensures reasonably comparability of rates between rural and urban areas. The Texas Universal Service Fund (TUSF) is currently composed of programs, such as the Texas High Cost Universal Service Plan (THCUSP), Small and Rural Incumbent Local Exchange Company Plan, Relay Texas, Lifeline, and Specialized Telecommunications Assistance Program (STAP), which seek to

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<sup>7</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8077 (1999), *petition for review filed sub nom. Vermont Department of Public Service v. FCC*, No. 99-60530 (5<sup>th</sup> Cir., filed June 23, 1999) (*Seventh Report and Order*) (“The Commission proposed imposing a requirement that each state assume a per-line share of the support obligation to ascertain its ability to achieve reasonable comparability of rates within its borders. The need for support would be calculated by comparing costs to benchmarks. The state’s ability to enable reasonably comparable rates would then be estimated by multiplying the per-line figure by the total number of non-rural carrier lines in the states. If the perceived support needed exceeded the estimate of a state’s resources, federal support would cover the difference in accordance with the mechanism”).

increase the availability of affordable basic local telecommunications service within Texas. Particularly in light of the nature of these programs and funding, the Texas PUC encourages the Commission to avoid the promulgation of any unwarranted, mandatory mechanisms to induce the advancement of universal service in Texas. The Texas PUC believes that the imposition of mandatory state inducements could impose inappropriate hardships that could disrupt the currently successful operation of the TUSF.

Moreover, the Texas PUC notes that it has recently concluded rulemaking projects that promote the advancement of universal service within Texas. Specifically, the Texas PUC adopted rules that clarify vendor registration and reimbursement requirements and procedures for STAP and that implemented provisions of House Bill 2345 (HB 2345), regarding specialized telecommunications programs.<sup>8</sup> In addition, the Texas PUC conducted a rulemaking project providing procedures for the disaggregation of a rural telecommunications carrier's federal universal service support and requiring all carriers to submit an annual certification that it is in compliance with the federal requirements found in section § 254(e) of the Federal Telecommunications Act (FTA).<sup>9</sup>

The Texas PUC is currently conducting several other rulemaking projects that promote universal service in rural Texas. For instance, the Texas PUC has recently initiated a rulemaking that is seeking to create an equitable sharing mechanism that would increase the provisioning of

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<sup>8</sup> *Rulemaking to Implement HB 2345, relating to Specialized Telecommunications Assistance Programs; and HB 472, relating to Texas Telemarketing Disclosure and Privacy Act as it concerns Telephone Directories (77<sup>th</sup> Legislature)*, Project No. 24525 (December 21, 2001).

<sup>9</sup> *Rulemaking to Implement the FCC 14<sup>th</sup> Report and Order, 01-157, Regarding Rural Carriers' Disaggregation Paths and Annual Certification with the FCC*, Project No. 24521 (March 20, 2002).

service via unbundled network elements (UNEs) in rural areas, thereby, creating a more competitively neutral market in rural Texas.<sup>10</sup> Moreover, the Texas PUC is conducting rulemaking projects seeking to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a certificate of convenience and necessity (CCN) holder by providing reimbursement for costs from the TUSF. In one project, the Texas PUC is seeking to establish procedures for residential or business customers in uncertificated areas to petition the state commission for voice-grade telecommunications services.<sup>11</sup> In another project, the Texas PUC is seeking to establish guidelines to provide high cost assistance for the voluntary provision of voice-grade telecommunications service in uncertificated areas of the state.<sup>12</sup> These rulemaking projects seek to enhance the availability of telecommunications service throughout Texas by providing TUSF support for basic local telephone service in areas where the service has not otherwise been provided. Furthermore, the Texas PUC is also conducting a rulemaking project to establish procedures for the automatic enrollment of qualifying individuals in Lifeline and LinkUp programs.<sup>13</sup> Consequently, the Texas PUC believes state inducements are unnecessary at this time to preserve and advance universal service in Texas.

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<sup>10</sup> *Rulemaking to Amend the USF Rules Regarding the Unbundled Network Element Sharing Mechanism*, Project No. 24526 (Pending).

<sup>11</sup> *Rulemaking to Implement HB 2388, 77<sup>th</sup> Legislature, Provision of Telecommunications Services to an Area not Included in a Certificated Service Area*, Project 24519 (Pending).

<sup>12</sup> *Rulemaking Regarding High Cost Assistance to a Telecommunications Provider that Volunteers to Provide Voice-Grade Service to an Uncertificated Area*, Project No. 24527 (Pending).

<sup>13</sup> *Rulemaking to Implement HB 2156 as it Concerns Enrollment in Telephone Discount Programs*, Project No. 24900 (Pending).

## **Conclusion**

We appreciate the opportunity to offer our comments in this proceeding. The Texas PUC believes that the Commission should recognize that federal and state law provide for the consideration of state and federal support in determining the sufficiency of universal service support. The Texas PUC further encourages the Commission to recognize the advances that various efforts in Texas have accomplished or are seeking to accomplish in promoting universal service throughout Texas when considering whether state inducements are necessary.

**Respectfully submitted,**

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**April 5, 2002**

**/original signed/**  
**Brett A. Perlman**  
**Commissioner**

**/original signed/**  
**Rebecca Klein**  
**Commissioner**